

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Case No. 08-14106 (reg)
SILVIA NUER, New York, New York
Debtor. May 12, 2009

TRANSCRIPT OF CHAP 7 HEARING ON OBJECTION TO MOTION
FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND
CROSS APPLICATION FOR A PROTECTIVE ORDER
BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: All right. Silvia Nuer! I'll get
2 appearances and then I have a couple of preliminary comments.

3 MR. SHAEV: David Shaev, Your Honor, co-counsel on
4 behalf of the Debtor.

5 THE COURT: Okay, Mr. Shaev.

6 MS. TIRELLI: Good morning, Your Honor; Linda Tirelli,
7 co-counsel on behalf of the Debtor.

8 THE COURT: Right.

9 MR. TEITELBAUM: Good morning, Your Honor; Jay
10 Teitelbaum, Teitelbaum & Baskin for J.P. Morgan Chase. And I
11 have one of my associates here, Vanessa Porcina.

12 THE COURT: Right, Mr. Teitelbaum.

13 MS. SIEGEL: Good morning, Judge; Judy Siegel from
14 Kittay & Gershfeld. I represent David Kittay, the Chapter 7
15 Trustee.

16 THE COURT: Good morning, Ms. Siegel. All right, have
17 seats everybody. Folks, I've reviewed all your papers, and I
18 have problems with each of your positions, but especially the
19 bank's.

20 Folks, Mr. Shaev and Ms. Tirelli, you've got a
21 contested matter. You have a right to discovery in a contested
22 matter as of right, but there's a lot of law in this district
23 that says you don't use a 2004 once you have a contested matter.
24 So, I guess the question is, is there any reason why I shouldn't
25 deem your motion -- deem this as simply you asking for the

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1 discovery as a matter of contested matter of discovery, and then
2 consider it a motion for a protective order?

3 Mr. Teitelbaum, I cannot for the life of me see any
4 basis upon which the Debtor is not entitled to information
5 concerning the entirety of this loan, including, among other
6 things, matters relating to agency, authority to act, ownership
7 of the loan, and anything of that sort.

8 And I cannot for the life of me see why it would take
9 you about eight seconds to hand over the loan file in this, plus
10 all the documents showing the appointment of the servicer, an
11 agency to act in this matter, plus anything else related to
12 this. So, you'd better help me, Mr. Teitelbaum. I'll hear from
13 you first.

14 MR. TEITELBAUM: Thank you, Your Honor. Good morning.
15 Jay Teitelbaum of Teitelbaum & Baskin. In point of fact, Your
16 Honor, we have produced about three hundred pages of documents,
17 which include the serving agreement from Long Beach Mortgage
18 Corp. to WaMu. We've produced the document from the FDIC
19 pursuant to which WaMu was taken over by J.P. Morgan Chase,
20 including the servicing obligations.

21 Your Honor, we've also produced a redacted schedule
22 for the pooling and servicing agreement. And it's redacted to
23 eliminate the names of all the people who are not Ms. Nuer that
24 were in this pooling and servicing agreement, together with the
25 email chain that shows that this came from Deutsche Bank's --

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1 from the Trust, reflecting that the loan docs went into the
2 pooling servicing agreement.

3 Your Honor, we believe that we've actually produced
4 the documents, which not only demonstrate the chain of title, if
5 you will, but also the servicing agreements. What we have
6 objected to, in point of fact, is the production of every other
7 document that is extraneous to proving what needs to be proven
8 for standing in this case.

9 Your Honor, we've also, I believe, demonstrated in our
10 papers in the chart, that the pleadings that have been filed in
11 connection with this case relating to matters extraneous to
12 standing are pleaded upon information and belief have no basis
13 in fact or law.

14 THE COURT: Isn't that for me to decide, rather than
15 you?

16 MR. TEITELBAUM: Well, Your Honor, that's why we move
17 for a protective order on those issues to hopefully have you
18 decide those issues. And this was a motion teed up by the
19 Debtor to seek this discovery. And while we did not take the
20 position, Your Honor, with respect to whether a 2004 is
21 appropriate in a contested matter, as opposed to when an
22 adversary is commenced, the law on that is obviously very clear.
23 I took the precaution, Your Honor, of filing the motion for a
24 protective order and saying you know there are even limits to a
25 fishing expeditions under 2004.

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1 And Your Honor, so what we've tried to do is say,
2 we're happy to and we've already produced to the Debtor the
3 documents related to the standing issue. And Your Honor, if I
4 may take a moment and just direct you just by way of example to
5 what we have in our pleadings in the chart. Just by way of
6 example; it's pleaded in the papers that the Debtor sustained
7 damages because there were illegal charges added to the loan
8 balance.

9 Well, the fact of the matter is, Your Honor, in
10 connection with the original motion for relief from the stay
11 attached to Ms. Griggs' affidavit, and that's already been
12 produced yet again, was a payment history. And what that showed
13 was in the history of this loan, which was originated in January
14 of '06, there were \$32 in late charges. The Debtor has not made
15 a payment in over 18 months, September of '07.

16 There are allegations in here that post-petition
17 payments were misapplied. Your Honor, if I had written a
18 pleading like this, you'd throw me in jail. I mean there's no
19 basis in fact for this. They've alleged that post-petition
20 payments were misapplied. There hasn't been a payment for more
21 than a year pre-petition and since the petition date.

22 Your Honor, there are allegations --

23 THE COURT: Who signed that pleading?

24 MR. TEITELBAUM: I believe that was Ms. Tirelli, Your
25 Honor. Then it goes on to say that we have violated the stay.

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1 How? Don't know. But the point of fact, Your Honor, the
2 mortgage was given on January 2006, recorded with the City of
3 New York, and we've provided all these documents and they are
4 actually part of the Court file; recorded mortgages on January
5 20, 2006.

6 Yes, there was a subsequent assignment to try to clean
7 up some issues, but the case law is clear. Not only the case
8 law, but 541(d) is clear that a subsequent assignment is not a
9 violation of the stay. Your Honor, that's pleaded.

10 There's also a claim that we violated 506. Your
11 Honor, I don't know how, but the fact of the matter is that the
12 property we put forth in our paper is worth between 137 and
13 \$148,000. The amount that we're owed J.P. Morgan -- actually
14 Deutsche Bank as Trustee, under two mortgages -- we only moved
15 for relief from the stay on the first -- the balance on the
16 first mortgage is about \$119. So, we're over secured. 506
17 allows the accrual of post-petition interest charges, etcetera.
18 So, Your Honor, I'm not sure where that comes from.

19 We've also identified the fact that the Debtor says we
20 violated Fanny Mae, Freddie Mac and Ginny Mae guidelines. The
21 Debtor knows this is a subprime loan. It's not a Fanny Mae
22 loan; it's not a Freddie Mac loan; it's not a Ginny Mae loan.
23 Those guidelines are not applicable to this situation. But yet,
24 they've alleged we've violated them.

25 Moreover, Your Honor, they have alleged that we

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1 violated the HUD Counseling requirements and they cite a very
2 specific statute. Had they only read the statute, they would
3 have seen that it's inapplicable. The statute they cited is 12
4 U.S.C. 1701x(c)(5) for the proposition that we failed to give
5 counseling under the HUD.

6 Well, first of all it's not a HUD loan. Secondly, the
7 definition of the person entitled to this counseling is an
8 eligible homeowner, which is defined in the statute as "A
9 homeowner is entitled to this if the home loan is secured by
10 property that is the principal residence."

11 Your Honor, in the Debtor's schedule she acknowledges
12 and admits this isn't her residence. She lives at a different
13 residence on Purdy Street. So, the HUD statute isn't
14 applicable. These are the types of things that we -- and when I
15 say we, Your Honor, it's not unique to this case, unfortunately.
16 This is sort of an epidemic that banks are bad.

17 And what I'm trying to say is, yeah, there are
18 problems; there are issues with these servicings and with these
19 pooling and servicing agreements, and Mr. Shaev knows I've been
20 involved in a lot of these. And when they're messed up, we try
21 to resolve them. But this one isn't. But this one has still
22 got the same boilerplate objection to a relief from stay motion
23 that loans that are deserving of them do.

24 And the problem is, Your Honor, with the caseload and
25 the workload at the courts and everything else, it's very

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1 difficult to discern what's real, what's not real. And Your
2 Honor, we've really taken the position here that we have to
3 demonstrate to Your Honor, that there are times when there are
4 problems; mortgages aren't recorded, loans are -- you know
5 payments aren't tendered, aren't received properly. This ain't
6 one of them; all right?

7 This is a situation where the Debtor frankly has
8 failed to make payments for 18 months, has filed pleadings with
9 this court that says I intend to surrender the premises.

10 We have three liens on the property; the first lien,
11 \$119,000. And by the way, Your Honor, I backed out the charges
12 that sometimes are offensive to court's. You know the
13 maintenance things. We're talking principal and interest here
14 on the first loan. The second loan is \$26,000. Not a payment
15 has been made.

16 The condo association has filed a lien of record --
17 and we've provided that -- of \$10,000. There's roughly 155,000
18 plus of liens on this property that have a value based on
19 valuations provided by J.P. Morgan here between 137 and 148,000.
20 For the life of me, Your Honor, I don't know why we're here.

21 This property has no value to the estate, the Debtor
22 can't make any payments to cure; it's not the Debtor's
23 residence. We're here on an issue that -- and I recognize we
24 have to prove standing to get relief from the stay, and we've
25 done that, Your Honor.

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1 J.P. Morgan filed this pleading as servicer for
2 Deutsche Bank as Trustee. We believe that we've shown Mr.
3 Shaev, and we've offered to discuss this with him further that
4 Deutsche Bank is the holder, and that J.P. Morgan is the
5 servicer.

6 Your Honor, the proof is in -- frankly, this is what's
7 astounding to me. I acknowledge, it's difficult, and it takes
8 more than an exec., it's unfortunate, to get documents from the
9 bank. But it didn't take me more than that to get it off the
10 SEC website. The 10K's and 10Q's and the pooling and servicing
11 agreement that are filed in connection with this trust attached
12 to them the subservicing agreement between Long Beach Mortgage
13 and WaMu.

14 There are certificates and certifications filed by
15 WaMu as servicer of this Trust. I mean these are publicly
16 available documents that had the Debtor done 15 seconds of
17 research would have seen this is a legitimate situation. This
18 isn't even a situation where the mortgage went through 38
19 permutations and was sold 38 different times. This is a
20 situation, it went into this Trust, it sits in that Trust, it
21 lays in that Trust today. The thing that changed was Long Beach
22 Mortgage was the original servicer.

23 On the day of the closing -- and we've provided this
24 document to the Debtor as well -- the Debtor signed and
25 initialed a notification. Your servicing is being transferred

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1 to Washington Mutual. I mean we've produced it. And I have it
2 here today. The Debtor signed it.

3 Washington Mutual filed its servicing requirements
4 under the SEC guidelines and has been the servicer. The Debtor
5 acknowledged in her pleadings it filed with this court that the
6 debt was there and Washington Mutual was the servicer. When
7 Washington Mutual failed in September of '05, and J.P. Morgan
8 Chase stepped in, there's an agreement. We've provided that
9 agreement. The agreement says J.P. Morgan is acquiring the
10 assets of Washington Mutual and all servicing obligations.

11 THE COURT: All right, Mr. Teitelbaum, I'm beginning
12 to understand the picture.

13 MR. TEITELBAUM: Thank you.

14 THE COURT: I'm going to let you speak on anything
15 that, after your opponents have had a chance to be heard, you
16 still need to say, but I want to hear from the other side.

17 MR. TEITELBAUM: Thank you.

18 THE COURT: I don't know if I'm going to hear from Mr.
19 Shaev or Ms. Tirelli. The pleadings that you signed, Ms.
20 Tirelli, may or may not be relevant to the discovery dispute
21 that I have now. But I need you to start by telling me how you
22 could make an accusation that post-petition payments were
23 misapplied when there were no post-petition payments.

24 MS. TIRELLI: Your Honor, I would have to certainly go
25 back and look to amend the pleadings if that is the case. I can

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1 say that the statement regarding the payments that I was
2 provided from opposing counsel has in fact the wrong the loan
3 account number across it. So, I cannot even verify that his
4 accounting for the loan is accurate or even pertains to our
5 situation here.

6 I would also like to speak to this being or not being
7 the Debtor's primary residence. Your Honor, at the time the
8 Debtor purchased this home, it was intended to be her primary
9 residence. However, there was a fake document -- a falsified
10 document produced at the closing. And what that false document
11 was, was in fact a right of first refusal, which is supposed to
12 be signed off by the condominium association.

13 When the Debtor, after the closing, went to register
14 with condominium association, she was denied even to be allowed
15 on the property, because in fact that document was fake.

16 For two years, this Debtor paid on this note trying to
17 get this straightened out; trying to figure out who it was that
18 produced this document at the closing. By information and
19 belief, it seems to be the bank's attorney, which actually filed
20 this document with the Registrar of the City of New York.

21 I don't believe that these ancillary issues are
22 necessarily what we're here to discuss today with regard to our
23 2004 request, although I'm certainly willing to address them and
24 defend my pleadings. This certainly would have been her primary
25 residence, and in fact she would love to have this as a primary

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1 residence. In fact a two-bedroom condo versus the one-bedroom
2 condo that she owned previously, which she was hoping to sell,
3 and was not able to. She was forced into a situation where she
4 had to carry two properties until we could get this straightened
5 out with WaMu, and whoever their successors are.

6 The other thing I do want to point out; with regard to
7 this assignment that was produced conveniently by the bank, I
8 certainly have some reservations with regard to the authenticity
9 of that document and also perhaps the motive for the bank in
10 producing it.

11 The initial assignment that was provided to me by
12 attorney Steven Baum's office was signed by I believe Mr. Scott
13 Walter. In my amended -- I'm sorry, in the supplement to my
14 objection to the motion for relief from stay, I produced for the
15 Court in fact three, if not four, additional assignments also
16 signed by Mr. Scott Walter claiming to be either vice president
17 or some sort of signatory of other banks within a very short
18 period of time. That is certainly one party we would certainly
19 like to hear from.

20 He has a very interesting resume claiming to be
21 signatory for a number of different banks. We just really have
22 questions about that assignment. Of course the bank will
23 conveniently say well we don't need that assignment anyway. And
24 in so responding, they actually produced now another assignment
25 from a Ms. Ann Garvis this time. And we have reservations

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1 regarding that one as well.

2 But I do want to focus today, if we may, back onto
3 this 2004 issue that we have with regard to our right to
4 discovery. I think there are enough questions presented by the
5 documents that have been produced so far that we can't trust
6 anything that comes from Chase Bank at this point.

7 THE COURT: All right. I'm going to assume from what
8 you didn't say that, unless Mr. Shaev is going to help you on
9 this; that you're not proceeding under 2004 anymore. That this
10 is all about contested matter discovery.

11 MR. SHAEV: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. SHAEV: It's a contested matter.

14 THE COURT: Now, I need from one of you to tell me --
15 I am not going to make a Chapter 7 Trustee in this District or a
16 Chapter 7 Debtor search Edgar files or go on -- be held to find
17 stuff that may have been filed with the SEC. But what I am of a
18 mind to do is to say that to the extent stuff hasn't been
19 produced, it has to be produced. But the converse is that if
20 you already got it, it doesn't have to be produced again. So,
21 why don't one of the two of you tell me what you asked for that
22 you didn't get.

23 MR. SHAEV: Well, I'll attempt to do that, Your Honor.
24 What happened is this; on Thursday evening, Mr. Teitelbaum
25 emailed to counsel at least to my email ten different emails

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1 with attachments. Some time Friday evening I finally figured out
2 that these were a set of five emails with emails and documents
3 that were hundreds of pages long. And there is also a duplicate
4 letter on each email and a duplicate list on each email.

5 Why we're having problems is that there's nothing in
6 these emails stating which document request this is in response
7 to. So, it's sort of a puzzle trying to say document number
8 one, is this their response to document request number 18, 17,
9 15 or whatever the case might be.

10 If this is in fact all of the documents that Chase is
11 able to produce in response to our requests, then I will
12 probably need to do request for admissions to that affect, and
13 we could move on.

14 MR. TEITELBAUM: Your Honor, may I respond?

15 THE COURT: Yes, when Mr. Shaev is done. Are you
16 done, Mr. Shaev?

17 MR. SHAEV: Well, as to what we were served, if Your
18 Honor would like, we can go through a very brief history of this
19 motion and show why, and what the various -- what we think the
20 defects are in what Chase did. Because Chase is stating and
21 admitting that they are the servicer in this matter and nothing
22 else. We believe them that they are the servicer in this
23 matter. We also believe that they're not the party in interest;
24 they're not the holder of the note; and do not have standing in
25 this matter. There's been no agency proven.

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1 Throughout the various documents -- I should say
2 statements provided by Chase, and I can go through them one by
3 one, and point out that they show Chase as servicer. At one
4 time as Creditor. But never --

5 THE COURT: Well, forgive me for interrupting you, Mr.
6 Shaev; today is not the motion for relief from the stay. Nor,
7 is it the time for me to decide the merits, if any, of mortgage
8 fraud or wrongful acts by one or more of the people in the chain
9 of origination of this mortgage. Today I have a discovery
10 dispute, which is why I had only budgeted 15 minutes for it.

11 I am inclined -- I was going to say subject to your
12 rights to be heard but this seems so obvious to me. I'm only
13 deciding the discovery dispute today. I'm going to give the
14 borrower's side a reservation of rights on borrower allegations
15 of lender misconduct or originator misconduct, and I'm going to
16 give the lender's side a reservations of rights on Rule 11
17 violations and the like.

18 What I need to get my arms around is the extent to
19 which I should deny a litigant in a matter before me the
20 opportunity to get the opposing party's documents, which if you
21 articulate it that way, really gets down to, have we got them
22 all? Which is something I'm not going to micromanage. Or is
23 there anything that was requested that's so unrelated to the
24 broad scope authorized under Rule 26 of the Federal Rules that I
25 should deny a litigant the ability to get the documents. Isn't

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1 it that simple, Mr. Teitelbaum? Now, I'll hear your reply.

2 MR. TEITELBAUM: Thank you so much, Your Honor. It
3 really is that simple. And quite frankly, Your Honor, I can
4 give you specific examples. First, we provided the documents in
5 five separate emails because we did not want to burden or blow
6 up anybody's email system by putting too much in one. We did
7 that as a courtesy, Your Honor.

8 We then also provided the documents by hand, the next
9 day when Debtor's counsel -- frankly, the only person that
10 seemed to have a problem with opening the documents -- said I
11 have a problem opening the documents and you gave me the same
12 document over and over again, which wasn't true because I cc
13 myself on every email and the documents are sequentially
14 numbered, and they were correctly attached. Be that as it may,
15 we provided a courtesy copy.

16 Your Honor, what we've done is we've laid out specific
17 objections to the specific requests. And let me start perhaps
18 with the easy ones. If we have addressed -- if we're trying to
19 address here the issue of do we have standing, what the
20 Debtor --

21 THE COURT: Forgive me, Mr. Teitelbaum, I'm not going to go
22 either now or at any time, category by category on this. This is a
23 discovery dispute. And you're representing a bank, and I have a host
24 of related issues concerning this loan. The allegations against your
25 client may be total garbage, but I can't make that determination until

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1 each side has had the opportunity to prove it's case.

2 Now the very fact that a lawyer of your quality is
3 appearing on this matter, rather than the folks that I usually see
4 representing the lender on consumer relief from stay matters, causes
5 me to believe that there are matters of a sophistication where a
6 prudent client would hire you. And I very much want to hear what you
7 have to say on the merits, but the short answer, unless you have
8 something else to tell me, is that you don't have to produce what you
9 produced again to the extent that you complied with Rule 34. But if
10 there's anything you haven't produced, you have to produce it.

11 And Rule 34(e) talks about how you have to make the
12 production. A party must produce documents as they're kept in the
13 usual course or must organize and label them to correspond to the
14 categories in the request. You don't have to do any more than that,
15 but you're not going to do less than that.

16 MR. TEITELBAUM: Your Honor, I believe -- two things.
17 First, I suppose thank you for the issue of why Chase would retain us.
18 In point of fact, Chase has retained our firm in connection with the
19 matters as a matter of policy to try to assist Chase in addressing
20 issues related to relief from stay. We are actually working with the
21 U.S. Trustee's Office on that.

22 In point of fact, attached to our document production is a
23 schedule of every document produced. And each one of these documents
24 related specifically to the issue of standing, Your Honor. And we
25 objected to the remaining documents, such as the handbook for how a

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1 custodian works; things of that nature. Which we haven't produced,
2 Your Honor, on the grounds, that again we filed the motion for a
3 protective order. My understanding of the law is relevant or likely
4 to lead to the discovery of relevant admissible evidence.

5 Even if we assume for the moment that all of the issues
6 that are pleaded in the objection are relevant, on the issue of
7 standing, what the Debtor has asked for is any and all documents,
8 computer records, reports, or other information related to the loan.
9 Your Honor, that is --

10 THE COURT: You're moving for relief from stay on a loan.
11 Why is that so unreasonable, Mr. Teitelbaum? Forgive me for raising
12 my voice. But I've never heard a contention by a lender that it is
13 not responsible for handing over all of the documents relating to its
14 loan.

15 MR. TEITELBAUM: Your Honor, the reason I believe that it
16 is unreasonable is we proved ownership of the loan by Deutsche Bank,
17 agency servicing, we've proven standing. If we've proven by
18 admissions of the Debtor that the Debtor hasn't made payments on the
19 loan for 18 months and can't make payments and that we've proven that
20 the value of the property is less than the aggregate amount of all of
21 the loan, and that the property isn't even the Debtor's residence,
22 Your Honor, I believe that what we have shown is cause for relief from
23 the stay.

24 The issue is, is any of the other information that they're
25 requesting frankly relevant to that issue. And we believe, Your

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1 Honor, that it is not. And I understand Your Honor's frustration; I'm
2 just trying to address it and be real reasonable in what we've
3 produced.

4 THE COURT: You know -- okay. I have a reputation for not
5 cutting people off. And that is one of my failings, as well as what
6 some may perceive as a strength. At this point, I'm going to cut you
7 off.

8 Here is my ruling, folks. To the extent, but only the
9 extent to which Chase -- excuse me -- J.P. Morgan has not previously
10 produced documents in the form required under Rule 34 of the Federal
11 Rules, as made applicable to bankruptcy matters under Rule 9014, it
12 will produce them. The production is to be made by one of the two
13 means authorized and required under Rule 34.

14 This production is without prejudice to the movant's rights
15 on the merits to get relief from the stay and without prejudice to the
16 lender's rights to seek Rule 9011 and Rule 11 sanctions for
17 allegations that did not have a sufficient basis in fact.

18 Allegations of the type that post petition payments were
19 misapplied, where no post petition payments were made, if ultimately
20 proven, Ms. Tirelli, are going to be one of the closest to slam dunk
21 bases for Rule 11 sanctions that I've seen in a long time. But if you
22 can show a good faith basis for allegations of that character, that
23 will be fine.

24 But for the avoidance of doubt, folks, the issues as to
25 standing and equity in the property and any other bases for relief

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1 from the stay are not before me today. This is a discovery dispute.
2 And under Rule 26, a Debtor is entitled to the documentation with
3 respect to the Debtor's loan. And I'm not going to make Debtor's or
4 their counsel, or for that matter, Chapter 17 Trustees or their
5 counsel, get stuff of the internet. Of course if and to the extent
6 documents that are produced to them manually or those that were
7 obtained in the internet, that's just fine. In fact, that's the way
8 it needs to be done.

9 Now, Mr. Teitelbaum, I understand your frustration as to
10 why you think you should ultimately win, but that's not what I'm
11 deciding today. I'm deciding whether a lender has to produce
12 documents. And the lender ain't gonna hide the ball on this. To the
13 extent that it hasn't they're going to be produced.

14 Now, Mr. Shaev, think you better ride shotgun with Ms.
15 Tirelli, to guide her through the bankruptcy process, because I'm
16 going to hold your side to the rules.

17 MR. SHAEV: I understand, Your Honor.

18 THE COURT: Okay.

19 MR. SHAEV: One question --

20 THE COURT: And amongst those rules of course is Rule 11.
21 Go ahead.

22 MR. SHAEV: One question; in our request for a 2004
23 examination, Chase has requested in this production of documents, that
24 we authenticate their documents. I don't know how. We'd never do
25 that without --

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1 THE COURT: Rule 34 requires the production of documents.
2 It places burdens and obligations upon the producing party. This
3 ruling is, to state the obvious, without prejudice to the borrower's
4 side's rights to depose Chase, Deutsche Bank, the originator, whoever
5 was handing over documents to the Debtor to sign and the like, and is
6 likewise without prejudice to Chase's ability to depose Ms. Nuer.

7 MR. SHAEV: We will consent on the record right now to
8 that. They're requesting it; we have no problem with that.

9 THE COURT: All right. Now, maybe she can authenticate it,
10 maybe she can't. But of course Chase has the right to depose her just
11 like everything else I said today. Each of you has the ability to
12 make the best case you wish to make.

13 And of course that would be the time at which -- you know I
14 did this as a second year associate, folks, about three weeks after I
15 was admitted to the bar. Is that your signature on this document?
16 Did you sign this document on or about the date that it bears? Did
17 you drop this document into the mail? Whatever, you know the drill.

18 MR. SHAEV: Your Honor, we're talking about many documents,
19 of course, not signed by the Debtor.

20 THE COURT: Well, that's something as to which both sides
21 can have a reservation of rights. Okay. I'm going to so order the
22 record, unless somebody wants a paper record.

23 If you want to mandamus me, Mr. Teitelbaum, you can take it
24 up to the District Court.

25 MR. TEITELBAUM: No, Your Honor; we accept your ruling.

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22

1 Thank you. For your time today.

2 THE COURT: All right. Fair enough.

3 MR. TEITELBAUM: Thank you, Your Honor.

4 (Whereupon, the matter was concluded at this time.)

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a
correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

Dated: May 15, 2009



Signature of Approved Transcriber

Rochelle V. Grant
Typed or Printed Name